

## **Assembly Bill No. 1664**

### **CHAPTER 869**

An act to amend Sections 13261, 13262, 13267, 13323, 13327, 13350, 13351, 13385, 13387, 13443, and 13627.1 of, to amend and renumber Sections 13627.2 and 13627.3 of, and to add Section 13627.2 to, the Water Code, relating to water.

[Approved by Governor October 13, 2001. Filed  
with Secretary of State October 14, 2001.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 1664, Pavley. Water quality.**

(1) The Porter-Cologne Water Quality Control Act (Water Quality Act) requires each person for whom waste discharge requirements have been prescribed by a California regional water quality control board, to submit a report and an annual fee, according to a fee schedule established by the State Water Resources Control Board, as specified. The act provides that any person who fails to furnish the report or pay the fee is guilty of a misdemeanor and the regional boards may administratively impose civil liability.

This bill would give the state board the same authority to impose administrative civil liability as the regional boards, as prescribed.

(2) The Water Quality Act requires the Attorney General, at the request of a regional board, to petition the superior court for the issuance of a temporary restraining order, temporary injunction, or permanent injunction, or combination thereof, as may be appropriate, in order to require any person to furnish the report or pay the annual fee in compliance with the above provisions.

This bill would give the state board the same authority to request the Attorney General to petition the superior court for the issuance of a temporary restraining order, temporary injunction, or permanent injunction, to require any person to furnish the report or pay the annual fee in compliance with the above provisions.

(3) The Water Quality Act authorizes the regional boards, in establishing or reviewing any water quality control plan or waste discharge requirement, to investigate the quality of any waters of the state within its region, as prescribed. In conducting the investigation, the regional boards may require any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of

discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region, to furnish technical or monitoring program reports. The burden, including costs, of these reports must bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.

This bill would expand the authority of the regional boards to authorize those boards to require any person who is suspected of having discharged waste within its region, or any citizen or domiciliary, or political agency or entity of this state who is suspected of having discharged waste outside of its region that could affect the quality of waters within its region, to furnish technical or monitoring program reports. The bill would require the regional board to provide the person with a written explanation on the need for the reports and the identification of the evidence that supports requiring the person to provide the reports.

(4) The Water Quality Act requires the state board, in determining the amount of civil liability to be imposed upon a violator of the above provisions, to take into consideration specified factors, including the economic savings to the violator.

This bill would require the state board to take into consideration the economic benefit or savings, if any, realized as a result of the violation.

(5) Pursuant to the Water Quality Act, a person who intentionally or negligently violates any cease and desist order or cleanup and abatement order issued pursuant to the above provisions, or intentionally or negligently discharges waste, or causes or permits waste to be deposited in violation of any waste discharge requirement issued pursuant to the above provisions, or causes or permits any oil or any residuary product of petroleum to be deposited in or on any waters of the state, except in accordance with waste discharge requirements, may be held civilly liable by a regional board and a superior court. When there is a discharge, and a cleanup and abatement order is issued, the act authorizes the regional board to impose liability in an amount not to exceed \$5,000, but not less than \$500, for each day the discharge occurs and for each day the cleanup and abatement order is violated. The act authorizes the superior court to impose liability in an amount not to exceed \$15,000 for each day the discharge occurs and for each day the cleanup and abatement order is violated. When there is a discharge, and a cleanup and abatement order is not issued, the act authorizes the regional board to impose liability in an amount not to exceed \$10 for each gallon of waste discharged. The act authorizes the superior court to impose liability in an amount not to exceed \$20 for each gallon of waste discharge. When there is no discharge, but an order issued by the regional board is violated, the regional board may impose liability in an amount not to



exceed \$1,000, but not less than \$100, for each day the violation occurs. The act authorizes the superior court to impose liability in an amount not to exceed \$10,000 for each day the violation occurs.

This bill would delete those provisions regarding the amount of liability that may be imposed by the regional boards or the superior court. The bill would authorize the regional boards, the state board, and the court to impose civil liability on a daily basis or on a per gallon basis, as specified.

(6) The Water Quality Act requires a superior court, in determining the amount of civil liability to be imposed upon a violator of the above provisions, to take into consideration specified factors.

This bill would require the superior court to also take into consideration the degree of toxicity of the discharge and the economic benefit or savings, if any, realized as a result of the violation. By imposing new duties upon the superior court, this bill would impose a state-mandated local program.

(7) The Water Quality Act prescribes certain civil penalties for violations of specified waste discharge requirements set forth in that act or the federal Clean Water Act. In determining the amount of liability to be imposed for violations of those acts, the regional boards, the state board, and the superior court, are required to take into consideration specified factors.

This bill would require the regional boards, the state board, and the superior court to also take into consideration whether the discharge is susceptible of cleanup or abatement, the degree of toxicity of the discharge, the effect on the violator's ability to continue its business, and any voluntary cleanup efforts undertaken by the violator. By imposing new duties on the superior court, this bill would impose a state-mandated local program.

(8) The Water Quality Act prescribes certain criminal penalties for knowing or negligent violations of specified waste discharge requirements set forth in that act or the federal Clean Water Act, including imprisonment.

This bill would specify that the authorized imprisonment be in the state prison.

(9) The Water Quality Act authorizes the state board to order moneys to be paid to a regional board, upon application, to assist the regional board in responding to a significant unforeseen water pollution problem, posing an actual or potential public health threat, for which the regional board does not have adequate resources budgeted.

This bill would also authorize the state board to order moneys paid to the regional board, upon application, for costs relating to the oversight and tracking of the implementation of the supplemental environmental



project required as a condition of an order imposing administrative civil liability.

(10) The Water Quality Act requires any supervisor and operator of a wastewater treatment plant to possess a certificate of appropriate grade in accordance with regulations adopted by the state board. The act imposes certain criminal penalties on any person who operates a wastewater treatment plant who does not hold a valid, unexpired certificate of the appropriate grade. The act requires any person or entity that contracts with the owner of a wastewater treatment plant to operate that plant to register with the state board. The act imposes certain criminal penalties on any person or entity that owns or operates a wastewater treatment plant that employs any person to operate the plant who does not hold a valid, unexpired certificate of the appropriate grade.

This bill would subject a person who commits certain acts in connection with the operation or management of a wastewater treatment plant, or with regard to a related registration or certification, to civil liability in an amount not to exceed \$5,000 for each violation. The bill would subject any person who submits to the state board false or misleading information on an application for a certificate or registration to civil liability in an amount not to exceed \$5,000 for each violation.

(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 13261 of the Water Code is amended to read:

13261. (a) Any person failing to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b) (1) Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount that may not exceed one thousand dollars (\$1,000) for each day in which the violation occurs. For purposes of this section only, the state



board shall have the same authority and shall follow the same procedures as set forth in Article 2.5 (commencing with Section 13323) of Chapter 5, except that the executive director shall issue the complaint with review by the state board. Civil liability may not be imposed by the regional board pursuant to this section if the state board has imposed liability against the same person for the same violation.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount that may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(c) Any person discharging or proposing to discharge hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly furnishes a false report under Section 13260, or who either willfully fails to furnish a report or willfully withholds material information under Section 13260 despite actual knowledge of that requirement, may be liable in accordance with subdivision (d) and is guilty of a misdemeanor.

This subdivision does not apply to any waste discharge that is subject to Chapter 5.5 (commencing with Section 13370).

(d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount that may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount that may not exceed twenty-five thousand dollars (\$25,000).

SEC. 2. Section 13262 of the Water Code is amended to read:

13262. The Attorney General, at the request of the regional board or the state board, shall petition the superior court for the issuance of a temporary restraining order, temporary injunction, or permanent injunction, or combination thereof, as may be appropriate, requiring any person not complying with Section 13260 to comply therewith.

SEC. 3. Section 13267 of the Water Code is amended to read:

13267. (a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.

(b) (1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged,



discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

(2) When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies. However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.

(c) In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.

(d) The state board or a regional board may require any person, including a person subject to a waste discharge requirement under Section 13263, who is discharging, or who proposes to discharge, wastes or fluid into an injection well, to furnish the state board or regional board with a complete report on the condition and operation of the facility or injection well, or any other information that may be reasonably required to determine whether the injection well could affect the quality of the waters of the state.

(e) As used in this section, “evidence” means any relevant evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in a civil action.



SEC. 4. Section 13323 of the Water Code is amended to read:

13323. (a) Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party so served that a hearing shall be conducted within 60 days after the party has been served. The hearing shall be before a panel of the regional board, consisting of three or more members of the regional board as it may specify, or before the regional board. The person who has been issued a complaint may waive the right to a hearing, in which case the regional board shall not conduct a hearing.

(c) After any hearing, the panel shall report its proposed decision and order to the regional board and shall, at the time it reports its decision to the regional board, supply a copy to the party served with the complaint, the party issuing the complaint, and any other person requesting a copy. Members of the panel may sit as members of the board in deciding the matter. The regional board, after making an independent review of the record and taking such additional evidence as may be necessary and could not reasonably have been offered before the hearing panel, may adopt, with or without revision, the proposed decision and order of the panel.

(d) Orders imposing administrative civil liability shall become effective and final upon issuance thereof, and are not subject to review by any court or agency except as provided by Sections 13320 and 13330. Payment shall be made not later than 30 days from the date on which the order is issued. The time for payment is extended during the period in which a person who is subject to an order seeks review under Section 13320 or 13330. Copies of these orders shall be served by personal service or by registered mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

SEC. 4.5. Section 13327 of the Water Code is amended to read:

13327. In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability,



economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

SEC. 5. Section 13350 of the Water Code is amended to read:

13350. (a) Any person who (1) intentionally or negligently violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, intentionally or negligently discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, and creates a condition of pollution or nuisance, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, shall be liable civilly in accordance with subdivision (d) or (e).

(b) (1) Any person who, without regard to intent or negligence, causes or permits any hazardous substance to be discharged in or on any of the waters of the state where it creates a condition of pollution or nuisance, except in accordance with waste discharge requirements or other provisions of this division, shall be strictly liable civilly in accordance with subdivision (d) or (e).

(2) For purposes of this subdivision, the term “discharge” includes only those discharges for which Section 13260 directs that a report of waste discharge shall be filed with the regional board.

(3) For purposes of this subdivision, the term “discharge” does not include any emission excluded from the applicability of Section 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to Environmental Protection Agency regulations interpreting Section 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

(c) There shall be no liability under subdivision (b) if the discharge is caused solely by any one or combination of the following:

(1) An act of war.

(2) An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(3) Negligence on the part of the state, the United States, or any department or agency thereof; provided, that this paragraph shall not be interpreted to provide the state, the United States, or any department or agency thereof a defense to liability for any discharge caused by its own negligence.





(4) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(5) Any other circumstance or event which causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge.

(d) The court may impose civil liability either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed fifteen thousand dollars (\$15,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis may not exceed twenty dollars (\$20) for each gallon of waste discharged.

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

(2) The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged.

(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

(g) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover such sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make such request only after a hearing, with due notice of the hearing given to all affected persons. In determining such amount, the court shall be subject to Section 13351.

(h) The provisions of Article 3 (commencing with Section 13330) and Article 6 (commencing with Section 13360) of this chapter shall

apply to proceedings to impose, assess, and recover an amount pursuant to this article.

(i) Any person who incurs any liability established under this section shall be entitled to contribution for such liability from any third party, in an action in the superior court and upon proof that the discharge was caused in whole or in part by an act or omission of the third party, to the extent that the discharge is caused by the act or omission of the third party, in accordance with the principles of comparative fault.

(j) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, except that no liability shall be recoverable under subdivision (b) for any discharge for which liability is recovered under Section 13385.

(k) The state board shall submit an annual report to the Legislature which shall be available to the public, list all instances in which civil liability has been administratively imposed by a regional board in accordance with subdivision (e) during the preceding year, and indicate the maximum amount of liability which could have been imposed and the amount actually imposed in each instance.

SEC. 6. Section 13351 of the Water Code is amended to read:

13351. In determining the amount of civil liability to be imposed pursuant to this chapter, the superior court shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and such other matters as justice may require.

SEC. 7. Section 13385 of the Water Code is amended to read:

13385. (a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged and fill material permit.

(3) Any requirements established pursuant to Section 13383.

(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act, as amended.



(6) Any requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.

(b) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:

(1) Twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars (\$25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), the term “discharge” includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.



(f) For purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal, except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j) and (k), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for the first serious violation and each additional serious violation in any period of six consecutive months, except that if no serious violation has occurred in the prior six months, the state board or regional board, in lieu of assessing the penalty applicable to the first serious violation, may elect to require the discharger to spend an amount equal to the penalty for a supplemental environmental project in accordance with the enforcement policy of the state board and any applicable guidance document, or to develop a pollution prevention plan. If the state board or regional board elects to require the discharger to carry out a supplemental environmental project or develop a pollution prevention plan pursuant to this subdivision, a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each additional serious violation in the six-month period that began with the violation that was waived in lieu of the supplemental environmental project or pollution prevention plan.

(2) For the purposes of this section, the following terms have the following meanings:

(A) A “serious violation” means any waste discharge that exceeds the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(B) A “supplemental environmental project” means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under Section 13385.

(C) A “period of six consecutive months” means the period beginning on the day following the date on which a serious violation or one of the violations described in subdivision (i) occurs and ending 180 days after that date.



(i) Notwithstanding any other provision of this division, and except as provided in subdivisions (j) and (k), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- (1) Exceeds a waste discharge requirement effluent limitation.
- (2) Fails to file a report pursuant to Section 13260.
- (3) Files an incomplete report pursuant to Section 13260.
- (4) Exceeds a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

- (A) An act of war.
- (B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(D) A bypass of a treatment facility located in the County of Los Angeles during the 2001 calendar year if the applicable waste discharge requirements incorporate a provision for the bypass, and that bypass meets the conditions set forth in Section 122.41 (m)(4) of Title 40 of the Code of Federal Regulations and any more stringent conditions incorporated into the waste discharge requirements and the bypass has been approved by the regional board as meeting those conditions.

(2) (A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress toward compliance



will be measured and the date by which the discharger will be in compliance with each interim requirement.

(ii) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan that meets the requirements of Section 13263.3.

(iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the waste discharge and the executive officer of the regional board concurs with the demonstration.

(B) Subdivisions (h) and (i) shall become applicable to a waste discharge on the date the waste discharge requirements applicable to the waste discharge are revised and reissued pursuant to Section 13380, unless the regional board does all of the following on or before that date:

(i) Modifies the requirements of the cease and desist order or time schedule order as may be necessary to make it fully consistent with the reissued waste discharge requirements.

(ii) Establishes in the modified cease and desist order or time schedule order a date by which full compliance with the reissued waste discharge requirements shall be achieved. For the purposes of this subdivision, the regional board may not establish this date later than five years from the date the waste discharge requirements were required to be reviewed pursuant to Section 13380. If the reissued waste discharge requirements do not add new effluent limitations or do not include effluent limitations that are more stringent than those in the original waste discharge requirements, the date shall be the same as the final date for compliance in the original cease and desist order or time schedule order or five years from the date that the waste discharge requirements were required to be reviewed pursuant to Section 13380, whichever is earlier.

(iii) Determines that the pollution prevention plan required by clause (ii) of subparagraph (A) is in compliance with the requirements of Section 13263.3 and that the discharger is implementing the pollution prevention plan in a timely and proper manner.

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).



(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

(C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. For the purposes of this subdivision, the time schedule may not exceed five years in length. If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(i) Effluent limitations for the pollutant or pollutants of concern.

(ii) Actions and milestones leading to compliance with the effluent limitation.

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan pursuant to Section 13263.3.

(k) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a POTW serving a small community, as defined by subdivision (b) of Section 79084, the





state board or the regional board may elect to require the POTW to spend an equivalent amount toward the completion of a compliance project proposed by the POTW, if the state or regional board finds all of the following:

(1) The compliance project is designed to correct the violations within five years.

(2) The compliance project is in accordance with the enforcement policy of the state board.

(3) The POTW has demonstrated that it has sufficient funding to complete the compliance project.

(l) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorneys' fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person's penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(m) Funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(n) (1) The state board shall report annually to the Legislature regarding its enforcement activities. The reports shall include all of the following:

(A) A compilation of the number of violations of waste discharge requirements in the previous year.

(B) A record of the formal and informal compliance and enforcement actions taken for each violation.

(C) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

(D) Recommendations, if any, necessary for improvements to the enforcement program in the following year.

(2) The report shall be submitted to the Chairperson of the Assembly Committee on Environmental Safety and Toxic Materials and the Chairperson of the Senate Committee on Environmental Quality on or before March 1, 2001, and annually thereafter.

SEC. 8. Section 13387 of the Water Code is amended to read:

13387. (a) Any person who knowingly or negligently does any of the following is subject to criminal penalties as provided in subdivisions (b), (c), and (d):

(1) Violates Section 13375 or 13376.



(2) Violates any waste discharge requirements or dredged or fill material permit.

(3) Violates any order or prohibition issued pursuant to Section 13243 or 13301, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(4) Violates any requirement of Section 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act, as amended.

(5) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substances which the person knew or reasonably should have known could cause personal injury or property damage.

(6) Introduces any pollutant or hazardous substance into a sewer system or into a publicly owned treatment works, except in accordance with any applicable pretreatment requirements, which pollutant or hazardous substance causes the treatment works to violate waste discharge requirements.

(b) Any person who negligently commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000), nor more than twenty-five thousand dollars (\$25,000), for each day in which the violation occurs, or by imprisonment for not more than one year in the county jail, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, subdivision (c), or subdivision (d), punishment shall be by a fine of not more than fifty thousand dollars (\$50,000) for each day in which the violation occurs, or by imprisonment of not more than two years, or by both.

(c) Any person who knowingly commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000), nor more than fifty thousand dollars (\$50,000), for each day in which the violation occurs, or by imprisonment in the state prison for not more than three years, or by both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision or subdivision (d), punishment shall be by a fine of not more than one hundred thousand dollars (\$100,000) for each day in which the violation occurs, or by imprisonment in the state prison of not more than six years, or by both.

(d) (1) Any person who knowingly commits any of the violations set forth in subdivision (a), and who knows at the time that the person thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than two hundred fifty thousand dollars (\$250,000) or imprisonment in the state prison of not more than 15 years, or both. A person which is an organization shall, upon conviction under this subdivision, be subject to



a fine of not more than one million dollars (\$1,000,000). If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, the maximum punishment shall be a fine of not more than five hundred thousand dollars (\$500,000) or imprisonment in the state prison of not more than 30 years, or both. A person which is an organization shall, upon conviction for a violation committed after a first conviction of the person under this subdivision, be subject to a fine of not more than two million dollars (\$2,000,000). Any fines imposed pursuant to this subdivision shall be in addition to any fines imposed pursuant to subdivision (c).

(2) In determining whether a defendant who is an individual knew that the defendant's conduct placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for actual awareness or actual belief that the defendant possessed, and knowledge possessed by a person other than the defendant, but not by the defendant personally, cannot be attributed to the defendant.

(e) Any person who knowingly makes any false statement, representation, or certification in any record, report, plan, notice to comply, or other document filed with a regional board or the state board, or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required under this division shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000), or by imprisonment in the state prison for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, punishment shall be by a fine of not more than twenty-five thousand dollars (\$25,000) per day of violation, or by imprisonment in the state prison of not more than four years, or by both.

(f) For purposes of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) For purposes of this section, "organization," "serious bodily injury," "person," and "hazardous substance" shall have the same meaning as in Section 309(c) of the Clean Water Act, as amended.

(h) Funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

SEC. 9. Section 13443 of the Water Code is amended to read:

13443. Upon application by a regional board that is attempting to remedy a significant unforeseen water pollution problem, posing an actual or potential public health threat, or is overseeing and tracking the implementation of a supplemental environmental project required as a condition of an order imposing administrative civil liability, and for which the regional board does not have adequate resources budgeted, the



state board may order moneys to be paid from the account to the regional board to assist it in responding to the problem.

SEC. 10. Section 13627.1 of the Water Code is amended to read:

13627.1. (a) Any person who operates a wastewater treatment plant who does not hold a valid, unexpired certificate of the appropriate grade issued pursuant to this chapter is guilty of a misdemeanor and may be liable civilly in an amount not to exceed one hundred dollars (\$100) for each day of violation.

(b) Any person or entity that owns or operates a wastewater treatment plant that employs, or allows the employment of, any person as a wastewater treatment plant operator who does not hold a valid and unexpired certificate of the appropriate grade issued pursuant to this chapter is guilty of a misdemeanor and may be liable civilly in an amount not to exceed one hundred dollars (\$100) for each day of violation.

(c) Any person who commits any of the acts listed in paragraph (2), (3), or (5) of subdivision (e) of Section 13627 or paragraph (3) or (5) of subdivision (c) of Section 13627.3, or who engages in dishonest conduct during an examination for certification, may be liable civilly in an amount not to exceed five thousand dollars (\$5,000) for each violation.

SEC. 10.5. Section 13627.2 is added to the Water Code, to read:

13627.2. Any person who submits to the state board false or misleading information on an application for a certificate or on an application for registration may be liable civilly in an amount not to exceed five thousand dollars (\$5,000) for each violation.

SEC. 10.7. Section 13627.2 of the Water Code is amended and renumbered to read:

13627.3. (a) Any person or entity that contracts with the owner of a wastewater treatment plant to operate that plant shall register with the state board, and shall, within a year after the registration or the renewal of the registration, and annually thereafter, prepare and submit to the state board a report with all of the following information:

(1) The name and address of the person or entity.

(2) The name and address of the wastewater treatment plants which the person or entity operates, or has operated during the preceding year, and the name of the applicable regional board which oversees each wastewater treatment plant.

(3) The name and grade of each wastewater treatment plant operator employed at each plant.

(4) Other information which the state board requires.

(b) The state board shall, by regulation, prescribe the procedures, and requirements for, registration pursuant to subdivision (a).



(c) The state board may refuse to grant, and may suspend or revoke, any registration issued by the state board pursuant to this section for good cause, including, but not limited to, any of the following reasons:

(1) The submission of false or misleading information on an application for registration.

(2) Employment of a person to operate a wastewater treatment plant who does not hold a valid, unexpired certificate of the appropriate grade.

(3) Willfully or negligently causing or allowing a violation of waste discharge requirements or permits issued pursuant to the Clean Water Act (33 U.S.C. Sec. 1251 et seq.).

(4) Failure to meet the registration requirements prescribed by the state board pursuant to subdivision (b).

(5) Failure to use reasonable care in the management or operation of the wastewater treatment plant.

(d) The state board shall conduct all proceedings relating to the refusal to grant, or the suspension or revocation of, registration pursuant to subdivision (c) in accordance with the rules adopted pursuant to Section 185.

(e) The state board shall establish a fee schedule to pay for its costs to implement this section.

(f) Any person or entity that fails to comply with subdivision (a) is guilty of a misdemeanor and may be civilly liable in an amount not to exceed one thousand dollars (\$1,000) for each day of the violation.

SEC. 10.9. Section 13627.3 of the Water Code is amended and renumbered to read:

13627.4. (a) The civil liability described in Section 13627.1, 13627.2, or 13627.3 may be administratively imposed in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5, except that the executive director shall issue the complaint with review by the state board.

(b) A remedy under this chapter is in addition to, and does not supersede or limit, other remedy, civil or criminal, except that no liability is recoverable against an operator under subdivision (c) of Section 13627.1 for a violation for which liability is recovered against the operator under Section 13350 or 13385.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one



million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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